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Council/Agency Meeting Held: <u>CITY CLERK</u>	
Deferred/Continued to: <u>CITY OF HUNTINGTON BEACH</u>	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	City Clerk's Signature _____
Council Meeting Date: December 19, 2005	Department ID Number: PL05-35

**CITY OF HUNTINGTON BEACH  
REQUEST FOR CITY COUNCIL ACTION**

**SUBMITTED TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS

**SUBMITTED BY:** *Penelope Culbreth Graft*  
PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

**PREPARED BY:** HOWARD ZELEFSKY, PLANNING DIRECTOR *Howard Zelefsky*

**SUBJECT:** APPROVE ZONING TEXT AMENDMENT NO. 05-01 (RELIGIOUS ASSEMBLY – COMPLIANCE WITH RLUIPA)

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:**

Transmitted for your consideration is Zoning Text Amendment No. 05-01 to amend four sections of the Huntington Beach Zoning and Subdivision Ordinance in order to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000. The proposed changes modify the Huntington Beach Zoning and Subdivision Ordinance by taking a proactive measure to comply with federal law. The amendment ensures that religious assembly uses are protected under RLUIPA citywide. The Planning Commission and staff recommend approval and adoption of the ordinance as proposed.

**Funding Source:** Not applicable.

**Recommended Action:**

**PLANNING COMMISSION AND STAFF RECOMMENDATION:**

Motion to:

"Approve Zoning Text Amendment No. 05-01 with findings for approval (ATTACHMENT NO. 1)" and adopt Ordinance No. 3724, an ordinance amending various sections of the Huntington Beach Zoning and Subdivision Ordinance relating to religious assembly/land uses (ATTACHMENT NO. 2)."

*D-2*

## REQUEST FOR ACTION

MEETING DATE: December 19, 2005

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### Planning Commission Action on October 11, 2005:

THE MOTION MADE BY SCANDURA, SECONDED BY DINGWALL TO APPROVE ZONING TEXT AMENDMENT NO. 05-01, WITH FINDINGS (ATTACHMENT NO. 4) AND FORWARD TO CITY COUNCIL CARRIED BY THE FOLLOWING VOTE:

AYES: RAY, DINGWALL, SCANDURA, BURNETT, DWYER, HORGAN  
NOES: NONE  
ABSENT: LIVENGOD  
ABSTAIN: NONE

### **MOTION PASSED**

### **Alternative Action(s):**

The City Council may make the following alternative motion(s):  
"Continue Zoning Text Amendment No. 05-01 and direct staff accordingly."

### **Analysis:**

#### **A. PROJECT PROPOSAL:**

Applicant: City of Huntington Beach

Location: 2000 Main Street, Huntington Beach, CA 92648

Zoning Text Amendment No. 05-01 is a request to modify four sections of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) in order to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA). Specifically, Zoning Text Amendment No. 05-01 represents a request pursuant to Section 247.02 of the HBZSO:

- A. To amend Chapter 204.16 K (Tent Event) by deleting the word "religious" and adding the word "any"; and
- B. To amend Chapter 210.04 L-3 by deleting the last sentence that states "See Section 230.06: Religious Assembly Yard Requirements"; and
- C. To amend Chapter 212.04 by permitting Religious Assembly with Zoning Administrator approval of a conditional use permit, and delete Section 212.04 L-10 referring to a five year time limitation; and
- D. To amend Chapter 230.06 (Religious Assembly Yard Requirements) by deleting the entire section.

The amendments to the various Sections of the HBZSO are necessary to ensure compliance with federal law and to ensure that religious assembly uses are protected under RLUIPA citywide.

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### B. BACKGROUND

The 106th Congress enacted RLUIPA in 2000 (ATTACHMENT NO. 5). The primary purpose of the Act is to ensure a person's right to free exercise of religion. The RLUIPA states "no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly." The act prohibits unequal land use regulations on religious uses. In effect, any regulation that allows theaters or similar assembly uses in a zone, but not churches or temples, will be in violation of RLUIPA.

Zoning Text Amendment No. 05-01 was initiated by the City in response to RLUIPA enacted by Congress in 2000. In 2002, the City of Huntington Beach approved a zoning text amendment to comply with RLUIPA for the Ellis-Goldenwest Specific Plan area. At that time the zoning text amendment did not address RLUIPA citywide. The proposed amendment accomplishes this for religious assembly uses citywide.

### C. PLANNING COMMISSION MEETING AND RECOMMENDATION:

The Planning Commission public hearing was held on October 11, 2005, at which time Zoning Text Amendment No. 05-01 was approved as submitted by staff. There were no public speakers for this item; however, the Planning Commission discussed options for churches currently operating under 5-year conditional use permits, routine Fire Code requirements, and codification.

### D. STAFF ANALYSIS AND RECOMMENDATION:

In its review of the Zoning and Subdivision Ordinance, Planning staff and the City Attorney's office determined that the proposed amendments were the only changes needed to make the Zoning and Subdivision Ordinance compliant with RLUIPA. Although the proposed changes to the Zoning and Subdivision Ordinance are minor in nature, the outcome provides consistent development regulations, and does not single out or segregate religious assembly uses from other assembly uses. For example, the proposed change to Section 212.04 eliminates the five-year limit for religious assembly uses in the industrial zone but still requires a conditional use permit as is required for schools and other types of assembly uses in that zone. Another example is in Section 204.16(K) (Tent Event), where the word "religious" is replaced with the word "any". The changes to the Zoning and Subdivision Ordinance would not result in an allowance of religious activity not already permitted by code, but are necessary to provide a consistency in development standards for all types of assembly uses.

Zoning Text Amendment No. 05-01 modifies the Huntington Beach Zoning and Subdivision Ordinance by taking a pro-active measure to comply with federal law. The amendment will not only comply with federal law, but also ensure that religious assembly uses are protected

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under RLUIPA citywide. Therefore, staff recommends that Zoning Text Amendment No. 05-01 be approved because it brings the HBZSO into conformance with the federal mandates of the 2000 RLUIPA.

### Environmental Status:

The proposed zoning text amendment is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

### Attachment(s):

City Clerk's Page Number	No.	Description
	1.	Suggested Findings for Approval – ZTA No. 05-01
	2.	Ordinance No. <u>3724</u> (ZTA No. 05-01)
	3.	Legislative Draft ZTA No. 05-01 (HBZSO Chapters 204.16 K, 210.04, 212.04, & 230.06)
	4.	Planning Commission Staff Report dated October 11, 2005
	5.	Religious Land Use and Institutionalized Persons Act

# ATTACHMENT 1

## **SUGGESTED FINDINGS FOR APPROVAL**

### **ZONING TEXT AMENDMENT NO. 05-01**

#### **SUGGESTED FINDINGS FOR APPROVAL – ZONING TEXT AMENDMENT NO. 05-01:**

1. Zoning Text Amendment No. 05-01 to amend various sections of the Zoning and Subdivision Ordinance is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan because the amendments delete specific development requirements only for religious assembly uses to ensure protection under the Religious Land Use and Institutionalized Persons Act (RLUIPA) citywide.
2. In the case of a general land use provision, the zoning text amendment is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed. The amendment will apply to religious assembly uses citywide. The amendment will create consistent development requirements for religious assembly uses and other assembly uses.
3. A community need is demonstrated for the proposed zoning text amendment. The proposed changes will ensure that the City is in compliance with the standards of the federally mandated RLUIPA. Additionally, Zoning Text Amendment No. 05-01 will apply consistent development standards to religious assembly uses and other assembly uses citywide.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice. The amendment will result in the City's ability to provide for freedom of religion and religious assembly in accordance with Federal law and consistent with the goals and policies of the General Plan.

# ATTACHMENT 2

ORDINANCE NO. 3724

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING VARIOUS SECTIONS OF THE  
HUNTINGTON BEACH ZONING AND SUBDIVISION  
ORDINANCE RELATING TO RELIGIOUS ASSEMBLY/LAND USE

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 204.16, subsection K, of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

K. Tent Event. Allows for the overflow of any assembly for a period not to exceed 72 consecutive hours and not more than once every 3 months.

SECTION 2. Section 210.04 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

210.04 RL, RM, RMH, RH, and RMP Districts: Land Use Controls

L-3 A conditional use permit from the Planning Commission is required, and only schools operating in conjunction with religious services are permitted as an accessory use. A General Day Care facility may be allowed as a secondary use, subject to a conditional use permit, if the Planning Commission finds that it would be compatible with adjacent areas and not cause significant traffic impacts.

SECTION 3. Section 212.04 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to change the Use Classification of Religious Assembly to ZA and to delete subsection L-10.

SECTION 4. Section 230.06 of the Huntington Beach Zoning and Subdivision Ordinance is hereby deleted in its entirety.

SECTION 5. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:


  
City Attorney

12/14/05

REVIEWED AND APPROVED:

  
City Administrator

INITIATED AND APPROVED:

  
Director of Planning



# ATTACHMENT 3

## LEGISLATIVE DRAFT

### Chapter 204

#### 204.16 Temporary Use Classifications

- A. Animal Shows. Exhibitions of domestic or large animals for a maximum of seven days. (3334-6/97)
- B. Festivals, Circuses and Carnivals. Provision of games, eating and drinking facilities, live entertainment, animal exhibitions, or similar activities in a tent or other temporary structure for a maximum of seven days. This classification excludes events conducted in a permanent entertainment facility. (3334-6/97) (3521-2/02)
- C. Commercial Filming, Limited. Commercial motion picture or video photography at a specific location six or fewer days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97)
- D. Personal Property Sales. Sales of personal property by a resident ("garage sales") for a period not to exceed 48 consecutive hours and no more than once every six months. (3334-6/97)
- E. Real Estate Sales. An office for the marketing, sales, or rental of residential, commercial, or industrial development. This classification includes "model homes." (3334-6/97)
- F. Retail Sales, Outdoor. Retail sales of new merchandise on the site of a legally established retail business for a period not to exceed 48 consecutive hours no more than once every 3 months. (3334-6/97)
- G. Seasonal Sales. Retail sales of seasonal products, including Christmas trees, Halloween pumpkins and strawberries. (3334-6/97)
- H. Street Fairs. Provision of games, eating and drinking facilities, live entertainment, or similar activities not requiring the use of roofed structures. (3334-6/97)
- I. Trade Fairs. Display and sale of goods or equipment related to a specific trade or industry for a maximum period of five days per year. (3334-6/97)
- J. Temporary Event. Those temporary activities located within the coastal zone that do not qualify for an exemption pursuant to Section 245.08. (3334-6/97)
- K. Tent Event. Allows for the overflow of ~~religious~~ **any** assembly for a period not to exceed 72 consecutive hours and not more than once every 3 months.

### Chapter 210

#### 210.04 RL, RM, RMH, RH, and RMP Districts: Land Use Controls

L-3 A conditional use permit from the Planning Commission is required, and only schools operating in conjunction with religious services are permitted as an accessory use. A General Day Care facility may be allowed as a secondary use, subject to a conditional use permit, if the Planning

Commission finds that it would be compatible with adjacent areas and not cause significant traffic impacts. See Section 230.06: Religious Assembly Yard Requirements.

## **Chapter 212**

### **212.04 IG and IL Districts: Land Use Controls (3254-10/94)**

In the following schedules, letter designations are used as follows: (3254-10/94)

"P" designates use classifications permitted in the I districts. (3254-10/94)

"L" designates use classifications subject to certain limitations prescribed by the "Additional Provisions" which follow. (3254-10/94)

"PC" designates use classifications permitted on approval of a conditional use permit by the Planning Commission. (3254-10/94)

"ZA" designates use classifications permitted on approval of a conditional use permit by the Zoning Administrator. (3254-10/94)

"TU" designates use classifications allowed upon approval of a temporary use permit by the Zoning Administrator. (3254-10/94)

"P/U" for an accessory use means that the use is permitted on the site of a permitted use, but requires a conditional use permit on the site of a conditional use. (3254-10/94)

Use classifications that are not listed are prohibited. Letters in parentheses in the "Additional Provisions" column refer to requirements following the schedule or located elsewhere in this ordinance. Where letters in parentheses are opposite a use classification heading, referenced provisions shall apply to all use classifications under the heading. (3254-10/94)

<b>IG AND IL DISTRICTS: LAND USE CONTROLS</b>	<b>P</b>	- Permitted
	<b>L</b>	- Limited (see <u>Additional Provisions</u> )
	<b>PC</b>	- Conditional use permit approved by Planning Commission
	<b>ZA</b>	- Conditional use permit approved by Zoning Administrator
	<b>TU</b>	- Temporary Use Permit
	<b>P/U</b>	- Requires conditional use permit on site of conditional use
	<b>-</b>	- Not Permitted

	<b>IG</b>	<b>IL</b>	<b>Additional Provisions</b>
<b>Residential</b>			
Group Residential	PC	PC	(J)
Public and Semipublic			(A)(M)
Community and Human Service			
Facilities	PC	PC	(L)
Day Care, General	ZA	ZA	
Heliports Maintenance & Service			
Facilities	PC	PC	(O)

- L-1 Only allowed upon approval of a conditional use permit by the Planning Commission for a mixed use project, subject to the following requirements: (3254-10/94)

Minimum site area: 3 acres (3254-10/94)

Maximum commercial space: 35 percent of the gross floor area and 50 percent of the ground floor area of buildings fronting on an arterial highway. (3254-10/94)

Phased development: 25 percent of the initial phase must be designed for industrial occupancy. For projects over 500,000 square feet, the initial phase must include 5 percent of the total amount of industrial space or 50,000 square feet of industrial space, whichever is greater. (3254-10/94)

- L-2 Allowed upon approval of a conditional use permit by the Planning Commission when designed and oriented for principal use by employees of the surrounding industrial development or when designed for general public use, after considering vehicular access and parking requirements. (3254-10/94)
- L-3 Allowed upon approval of a conditional use permit by the Zoning Administrator when in a free-standing structure or as a secondary use in a building provided that no more than 20 percent of the floor area is occupied by such a use. (3254-10/94, 3523-2/02)
- L-4 Only stations offering services primarily oriented to businesses located in an I District are allowed with a conditional use permit by the Planning Commission. (3254-10/94)
- L-5 No new or used automobile, truck or motorcycle retail sales are permitted. (3254-10/94)
- L-6 Only schools offering higher education curriculums are allowed with conditional use permit approval by the Planning Commission. No day care, elementary or secondary schools are permitted. (3254-10/94)
- L-7 Recycling Operations as an accessory use are permitted; recycling operations as a primary use are allowed upon approval of a conditional use permit by the Planning Commission. (3254-10/94)
- L-8 Allowed upon conditional use permit approval by the Planning Commission when a single building with a minimum area of 100,000 square feet is proposed on a site fronting an arterial. The primary tenant shall occupy a minimum 95% of the floor area and the remaining 5% may be occupied by secondary tenants. (3254-10/94)
- L-9 Permitted if the space is 2,500 square feet or less; allowed by conditional use permit approval by the Zoning Administrator if the space is over 2,500 square feet. (3254-10/94, 3523-2/02)
- L-10 ~~Allowed by conditional use permit approval by the Zoning Administrator for a period of time not to exceed five (5) years. (3254-10/94, 3523-2/02)~~ **RESERVED**

## **Chapter 230**

### **230.06 — Religious Assembly Yard Requirements**

~~Yards, height and bulk, and buffering requirements shall be as specified by a conditional use permit, provided that the minimum interior side yard and rear yard shall each be 20 feet. Yards adjoining street property lines shall not be less than required for a permitted use.~~

# ATTACHMENT 4



City of Huntington Beach Planning Department  
**STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Howard Zelefsky, Director of Planning  
**BY:** Jason Kelley, Assistant Planner *JK*  
**DATE:** October 11, 2005

**SUBJECT:** ZONING TEXT AMENDMENT NO. 05-01 (Religious Assemblies - Compliance with RLUIPA 2000)

**APPLICANT:** City of Huntington Beach Planning Department, 2000 Main Street, Huntington Beach, CA 92648

**LOCATION:** Citywide

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**STATEMENT OF ISSUE:**

- ♦ Zoning Text Amendment No. 05-01 request:
  - Amend the industrial district of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) by adding religious assembly as a conditionally permitted use to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) enacted by Congress in 2000.
  - Amend various sections of the HBZSO by deleting language referencing religious assembly to comply with the RLUIPA 2000.
- ♦ Staff's Recommendation: Approve Zoning Text Amendment No. 05-01 and forward to the City Council for adoption based upon the following:
  - The amendment will comply with the federal mandates of the RLUIPA 2000 by allowing for religious assembly uses citywide.

**RECOMMENDATION:**

Motion to:

"Approve Zoning Text Amendment No. 05-01 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2), including the legislative draft to the City Council for adoption."

**ALTERNATIVE ACTION(S):**

The Planning Commission may take alternative actions such as:

- A. "Deny Zoning Text Amendment No. 05-01 with findings for denial."
- B. "Continue Zoning Text Amendment No. 05-01 and direct staff accordingly."

*B-1*

## **PROJECT PROPOSAL:**

Zoning Text Amendment No. 05-01 represents a request to modify four sections of the Huntington Beach Zoning and Subdivision Ordinance in order to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA). Specifically, Zoning Text Amendment No. 05-01 represents a request pursuant to Section 247.02 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO):

- A. To amend Chapter 204.16 K (Tent Event) by deleting the word "religious" and adding the word "any"; and
- B. To amend Chapter 210.04 L-3 by deleting the last sentence that states "See Section 230.06: Religious Assembly Yard Requirements"; and
- C. To amend Chapter 212.04 by permitting Religious Assembly with Zoning Administrator approval of a conditional use permit, and delete Section 212.04 L-10 referring to a five year time limitation; and
- D. To amend Chapter 230.06 (Religious Assembly Yard Requirements) by deleting the entire section.

Zoning Text Amendment No. 05-01 was initiated by the City in response to RLUIPA enacted by Congress in 2000. In 2002, the City of Huntington Beach approved a zoning text amendment to comply with RLUIPA for the Ellis-Goldenwest Specific Plan area. At that time the zoning text amendment did not address RLUIPA citywide. Therefore, the proposed amendment is intended as a pro-active measure not only to comply with federal law, but also to ensure that religious assembly uses are protected under RLUIPA citywide.

## **ISSUES:**

### **General Plan Conformance:**

The proposed Zoning Text Amendment is consistent with the goals, policies, and objectives of the City's General Plan as follows:

#### **A. Land Use Element**

Goal LU 13: Achieve the development of a mix of governmental services, institutional, educational, and religious uses that support the needs of Huntington Beach's residents.

Objective LU 13.1: Provide for the continuation of existing and development of new uses, such as governmental administrative, public safety, human service, cultural, educational, infrastructure, religious and other uses that support the needs of existing and future residents and businesses.

Policy LU 13.1.2: Allow for the continuation of existing and development of new religious facilities in any land use zone where they are compatible with adjacent uses and subject to City review and approval.



The proposed zoning text amendment eliminates language referencing specific requirements only for religious uses. Deleting the language ensures that the development standards for assembly and religious uses are consistent between the two, which complies with RLUIPA.

**Urban Design Guidelines Conformance:** Not applicable

**Environmental Status:** The proposed zoning text amendment is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

**Coastal Status:** This zoning text amendment will be processed as a minor amendment to the Huntington Beach Local Coast Program implementing ordinances and will be filed with the California Coastal Commission with other minor amendments.

**Redevelopment Status:** Not applicable.

**Design Review Board:** Not applicable.

**Subdivision Committee:** Not applicable.

**Other Departments Concerns and Requirements:** There are no concerns from other City Departments.

**Public Notification:**

An expanded legal notice was published in the Huntington Beach/Fountain Valley Independent on October 6, 2005 and notices were sent to individuals/organizations requesting notification (Planning Department's Notification Matrix) and interested parties. As of October 6, 2005, no communication supporting or opposing the request has been received.

**Application Processing Dates:**

**DATE OF COMPLETE APPLICATION:**

Not Applicable

**MANDATORY PROCESSING DATE(S):**

Not applicable because ZTA is a legislative act and not a development permit

**ANALYSIS:**

RLUIPA was enacted by the 106<sup>th</sup> Congress in 2000 (Attachment No. 4). The primary purpose of the Act is to ensure a person's right to free exercise of religion. The RLUIPA states that "no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly." The act prohibits unequal land use regulations on religious uses. In effect, any regulation that allows theaters or similar assembly uses in a zone, but not churches or temples, will be in violation of RLUIPA.

In its review of the Zoning and Subdivision Ordinance, City staff determined that the proposed amendments were the only changes needed to make the Zoning and Subdivision Ordinance compliant with RLUIPA. Although the proposed changes to the Zoning and Subdivision Ordinance are minor in nature, the outcome provides consistent development regulations, and does not single out or segregate religious assembly uses from other assembly uses. For example, the proposed change to Section 212.04 eliminates the five-year limit for religious assembly uses but still requires a conditional use permit as is required for schools and other types of assembly uses. Another example is in Section 204.16(K) (Tent Event), where the word “religious” is replaced with the word “any”. The changes to the Zoning and Subdivision Ordinance would not result in an allowance of religious activity not already permitted by code, but are necessary to provide a consistency in development standards for all types of assembly uses.

Zoning Text Amendment No. 05-01 modifies the Huntington Beach Zoning and Subdivision Ordinance by taking a pro-active measure to comply with federal law. The amendment will not only comply with federal law, but also ensure that religious assembly uses are protected under RLUIPA citywide. Therefore, staff recommends that the Zoning Text Amendment No. 05-01 be approved for the following reasons:

- The amendment will comply with the federal mandates of the RLUIPA 2000 by allowing for religious assembly uses citywide.

#### **ATTACHMENTS:**

1. Suggested Findings for Approval – ZTA #05-01

SH:MBB:jk:rl

## **ATTACHMENT NO. 1**

### **SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL**

#### **ZONING TEXT AMENDMENT NO. 05-01**

#### **SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:**

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act. The project is exempt because it involves minor amendments to the zoning ordinance, which does not change the development standards, intensity, or density of the affected districts.

#### **SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 05-01:**

1. Zoning Text Amendment No. 05-01 to amend various sections of the Zoning and Subdivision Ordinance is consistent with the goals, objectives and policies of the General Plan because the amendment deletes specific development requirements only for religious assembly uses to ensure protection under the Religious Land Use and Institutionalized Persons Act (RLUIPA) citywide.
2. In the case of a general land use provision, the zoning text amendment is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed. The amendment will apply to religious assembly uses citywide. The amendment will create consistent development requirements for religious assembly uses and other assembly uses.
3. A community need is demonstrated for the proposed zoning text amendment. The proposed changes will ensure that the City is in compliance with the standards of the federally mandated RLUIPA. Additionally, Zoning Text Amendment No. 05-01 will apply consistent development standards to religious assembly uses and other assembly uses citywide.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice. The amendment will result in the City's ability to provide for freedom of religion and religious assembly in accordance with Federal law and consistent with the goals and policies of the General Plan.

# ATTACHMENT 5

**RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS****SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Religious Land Use and Institutionalized Persons Act of 2000'.

**SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.****(a) SUBSTANTIAL BURDENS-**

(1) ~~GENERAL RULE-~~ ~~No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--~~

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) **SCOPE OF APPLICATION-** This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

**(b) DISCRIMINATION AND EXCLUSION-**

(1) **EQUAL TERMS-** No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) **NONDISCRIMINATION-** No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) **EXCLUSIONS AND LIMITS-** No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

**SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.**

(a) **GENERAL RULE-** No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) **SCOPE OF APPLICATION-** This section applies in any case in which--

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

**SEC. 4. JUDICIAL RELIEF.**

(a) **CAUSE OF ACTION-** A person may assert a violation of this Act as a claim or defense in a judicial

## Religious Land use and Institutionalized Persons

proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) **BURDEN OF PERSUASION**- If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) **FULL FAITH AND CREDIT**- Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) **ATTORNEYS' FEES**- Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended--

(1) by inserting 'the Religious Land Use and Institutionalized Persons Act of 2000,' after 'Religious Freedom Restoration Act of 1993,'; and

(2) by striking the comma that follows a comma.

(e) **PRISONERS**- Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) **AUTHORITY OF UNITED STATES TO ENFORCE THIS ACT**- The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) **LIMITATION**- If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

## SEC. 5. RULES OF CONSTRUCTION.

(a) **RELIGIOUS BELIEF UNAFFECTED**- Nothing in this Act shall be construed to authorize any government to burden any religious belief.

(b) **RELIGIOUS EXERCISE NOT REGULATED**- Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) **CLAIMS TO FUNDING UNAFFECTED**- Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) **OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED**- Nothing in this Act shall--

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) **GOVERNMENTAL DISCRETION IN ALLEVIATING BURDENS ON RELIGIOUS EXERCISE**- A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) **EFFECT ON OTHER LAW**- With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) **BROAD CONSTRUCTION**- This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

(h) **NO PREEMPTION OR REPEAL**- Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) **SEVERABILITY**- If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

## **SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.**

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the 'Establishment Clause'). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term 'granting', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

## **SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.**

(a) **DEFINITIONS**- Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2) is amended--

- (1) in paragraph (1), by striking 'a State, or a subdivision of a State' and inserting 'or of a covered entity';
- (2) in paragraph (2), by striking 'term' and all that follows through 'includes' and inserting 'term 'covered entity' means'; and
- (3) in paragraph (4), by striking all after 'means' and inserting 'religious exercise, as defined in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.'

(b) **CONFORMING AMENDMENT**- Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking 'and State'.

## **SEC. 8. DEFINITIONS.**

In this Act:

- (1) **CLAIMANT**- The term 'claimant' means a person raising a claim or defense under this Act.
- (2) **DEMONSTRATES**- The term 'demonstrates' means meets the burdens of going forward with the evidence and of persuasion.
- (3) **FREE EXERCISE CLAUSE**- The term 'Free Exercise Clause' means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.
- (4) **GOVERNMENT**- The term 'government'--

(A) means--

- (i) a State, county, municipality, or other governmental entity created under the authority of a State;
- (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
- (iii) any other person acting under color of State law; and

(B) for the purposes of sections 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) LAND USE REGULATION- The term 'land use regulation' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) PROGRAM OR ACTIVITY- The term 'program or activity' means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

(7) RELIGIOUS EXERCISE-

(A) IN GENERAL- The term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) RULE- The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.



# RCA ROUTING SHEET

<b>INITIATING DEPARTMENT:</b>	Planning
<b>SUBJECT:</b>	Zoning Text Amendment No. 05-01 (Religious Assembly - Compliance with RLUIPA)
<b>COUNCIL MEETING DATE:</b>	December 19, 2005

RCA ATTACHMENTS	STATUS
Ordinance (w/exhibits & legislative draft if applicable)	Attached <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/>
Resolution (w/exhibits & legislative draft if applicable)	Attached <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Tract Map, Location Map and/or other Exhibits	Attached <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Contract/Agreement (w/exhibits if applicable) (Signed in full by the City Attorney)	Attached <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Subleases, Third Party Agreements, etc. (Approved as to form by City Attorney)	Attached <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Certificates of Insurance (Approved by the City Attorney)	Attached <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Fiscal Impact Statement (Unbudget, over \$5,000)	Attached <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Bonds (If applicable)	Attached <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Staff Report (If applicable)	Attached <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/>
Commission, Board or Committee Report (If applicable)	Attached <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Findings/Conditions for Approval and/or Denial	Attached <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/>

EXPLANATION FOR MISSING ATTACHMENTS

REVIEWED	RETURNED	FORWARDED
Administrative Staff	( )	(MBB)
Assistant City Administrator (Initial)	( )	(PE)
City Administrator (Initial)	( )	(pcg)
City Clerk	( )	

EXPLANATION FOR RETURN OF ITEM:
Howard's signature on Ordinance
type

(Below Space For City Clerk's Use Only)

RCA Author: HZ:SH:MBB:jk